

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHILIP BENHAM

PLAINTIFF

V.

CASE NO.: 3:19-cv-00911-HTW-LRA

**CITY OF JACKSON, MISSISSIPPI
and JAMES E. DAVIS, in his official
capacity as Chief of Police for Jackson
Police Department**

DEFENDANTS

MOTION TO DISMISS AS MOOT

COME NOW the City of Jackson, Mississippi, and Chief James E. Davis, in his official capacity as Chief of Police for the Jackson Police Department, collectively referred to herein as “Defendants” or the “City of Jackson Defendants,”¹ by and through counsel, pursuant to Fed.R.Civ.P. 12(b)(6), and hereby move this Court to dismiss Plaintiff’s Verified Complaint [1] and Motion for Preliminary Injunction [4], which allege that *An Ordinance of the City of Jackson, Mississippi, Prohibiting Certain Activities Near Health Care Facilities*, Sections 86-401 through 86-409 of the Jackson Code of Ordinances, violates Plaintiff’s First Amendment Clause and Due Process Clause rights and should be enjoined from application and enforcement.

Defendants move this Court for dismissal with prejudice on the basis of mootness in light of changed circumstances, specifically the repeal of Sections 86-401 through 86-409 of the Jackson Code of Ordinances, *An Ordinance of the City of Jackson, Mississippi, Prohibiting Certain Activities Near Health Care Facilities*, in their entirety. A certified copy of the City of

¹ The terms “City of Jackson Defendants” and “Defendants” include Chief James E. Davis, as a lawsuit filed against a City of Jackson employee in his/her official capacity is tantamount to a lawsuit filed against the City itself.

Jackson, Mississippi, City Council's approved and passed ordinance, entitled *Ordinance of the City of Jackson Repealing Sections 86-401 through 86-409 of the Jackson Code of Ordinances*, effective November 16, 2020, will be filed with the Court.

Wherefore, Defendant respectfully requests that this Court dismiss Plaintiff's Verified Complaint [1] and Plaintiff's Motion for Preliminary Injunction [4], with prejudice, as moot in their entirety, with each party to bear its own costs and fees, and for other such relief as this Court deems appropriate under the circumstances.

Respectfully submitted this the 16th day of November, 2020.

CITY OF JACKSON DEFENDANTS

By: /s/ Timothy Howard
Timothy Howard, MSB # 10687
City Attorney for the City of Jackson, Mississippi
Lee Thames, MSB # 10314
Special Assistant to the City Attorney
J. Paige Wilkins, MSB # 102052
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CERTIFICATE OF SERVICE

I, Timothy Howard, do hereby certify that I have this day delivered, via electronic mail and/or U.S. mail, a true and correct copy of the above and foregoing document, to the following:

Nathan W. Kellum
Center for Religious Expression
699 Oakleaf Office Lane, Suite 107
Memphis, TN 38117
Email: nkellum@crelaw.org

So certified, this the 16th day of November, 2020.

By: /s/ Timothy Howard
Timothy Howard